



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

LARRIANTE SUMBRY,
Petitioner,

vs.

STATE OF INDIANA,
Respondent.

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CIVIL ACTION NO. 4:06-CV-2010-HFF

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND DISMISSING THIS ACTION WITHOUT PREJUDICE AND
WITHOUT REQUIRING RESPONDENT TO FILE A RETURN

This case was filed as a Section 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the petition be dismissed *with prejudice* and without requiring Respondent to file a return. The Report is made in accordance with 28 U.S.C. § 636, and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 11, 2006, and Petitioner's objections were entered by the Clerk of Court on September 25, 2006. The Court has carefully reviewed Petitioner's objections but finds them to be without merit. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report, except the Court will dismiss the petition *without prejudice*, and incorporates it herein. Therefore, it is the judgment of this Court that the petition must be **DISMISSED** *without prejudice*. Respondents are not required to file a return.

IT IS SO ORDERED.

Signed this 5th day of October, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd

HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.